

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**BRUCE D. CARTER AND HILLARY T.
CARTER**

VERSUS

**CNH AMERICA, LLC and CASE
CORPORATION**

*** CIVIL ACTION NO. 05-1875**

*** JUDGE JAMES**

*** MAGISTRATE JUDGE HAYES**

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, are two Motions to Dismiss filed by defendants CNH America (Doc. 42) and Scott Tractor Company ("Scott") (Doc. 43). The motions are unopposed.

On August 7, 2006, the undersigned entered a memorandum ruling and order, which is incorporated herein by reference and to which no appeal has been filed, denying plaintiff's motion to remand based on the finding that the plaintiffs had demonstrated no reasonable possibility of recovering from Scott in state court and, therefore, that Scott was improperly joined as a defendant. In light of this finding, it is recommended that the motions be **GRANTED** and that the plaintiff's claims against Scott Tractor Company be **DISMISSED** with prejudice and at their cost.

Under the provisions of 28 U.S.C. §636(b)(1)(C) and FRCP Rule 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **ten (10) business days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Monroe, Louisiana, this 16th day of October, 2006.

A handwritten signature in black ink, appearing to read "Karen L. Hayes", is written over a horizontal line.

KAREN L. HAYES
U. S. MAGISTRATE JUDGE